IN THE DRAWINGS

The Office has objected to FIG. 10 for failing to include reference number 75. Upon review of the application it appears that the correct reference number is 78. FIG. 10 has accordingly been corrected to include reference number 78, and a replacement sheet is submitted herewith.

Applicant has also corrected FIG. 7 to include reference number 72, and a replacement of that sheet is submitted herewith.

Approval of the corrected drawings is respectfully requested.

REMARKS

Claims 1-12, 16-30, 34-35, 38, and 42-48 are pending in the application after the present amendment. Of these, claims 5-11, 20-26 and 28-30 stand withdrawn from consideration as being drawn to non-elected species in the event no generic claim is held allowable. Claims 1-4 and 16-19 have been held to be generic. Claims 1-4, 12, 16-19, 27, 34, 35, 38 and 42-48 remain under consideration. For the reasons set forth below, reconsideration of the pending claims, as amended herein, is respectfully requested.

Claims 1-3, 16-18, 39-41 stand rejected as being anticipated by Muhanna (USPN 6,936,070); claims 1, 2, 12, 16, 17, 27, 31, 35, 36 and 39 stand rejected as being anticipated by Trieu (USPN 6,620,196); claims 1, 2, 12, 31 and 34 stand rejected as being anticipated by Laboureau (FR 2,651,994); claims 1, 2, 4, 12, 16, 17, 19, 31, and 33-35 stand rejected as being anticipated by Sybert et al. (US 2002/107,570); and claims 1-3, 12, 31 and 32 stand rejected as being anticipated by Richter (USPN 6,736,838.

Claims 36-38, 42, 44-48 are rejected as being unpatentable over Stone (USPN 5,258,043) in view of Sybert et al. (US 2002/107,570) and Li (USPN 6,733,505). Claim 43 is rejected as being unpatentable over Stone '043 in view of Sybert et al. (US 2002/107,570) and Li '505 as applied to claim 42, and further in view of Muhanna '070.

By this amendment claims 1, 16, and 42 have been amended to include the limitation that the device comprises a length of natural tissue sized for introduction into an intervertebral disc nucleus space, wherein said device additionally comprises a drawstring effective for folding the tissue to a folded configuration after implantation of the tissue in a disc nucleus space. That limitation is neither taught nor suggested by the

cited prior art. Accordingly, the amended claims are believed to be patentable over the cited prior art, whether cited individually or in any combination.

As to the specifics of the prior art, Muhanna '070 shows an intervertebral implant that appears to be positioned between adjacent discs, but not within a disc nucleus space. More importantly, Muhanna '070 does not show a drawstring effective for folding the device to a folded configuration after implantation of the device in a disc nucleus space.

Trieu '196 shows disc nucleus implants, but does not show a drawstring effective for folding the implant to a folded configuration after implantation of the implant in a disc nucleus space.

Labroureau '994 may show a prosthetic device, but it does not show a drawstring effective for folding the device to a folded configuration after implantation of the device in a disc nucleus space.

Sybert '570 shows an osteogenic band, but does not show that the band may be used within a disc nucleus space. More importantly, Sybert '570 does not show a drawstring effective for folding the band to a folded configuration after implantation, even if the band were to be implanted in a disc nucleus space.

Richter '838 shows a stent, and not a device that would be implanted into a disc nucleus space. Here too, Richter '838 does not appear to show a drawstring effective for folding the stent to a folded configuration after implantation, even if the stent were to be implanted into a disc nucleus space.

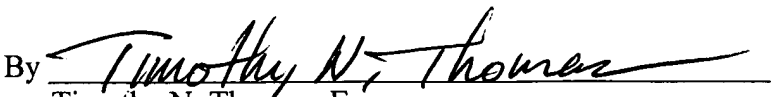
Stone '043 shows a prosthetic intervertebral disc, but does not show a drawstring effective for folding the prosthesis to a folded configuration after implantation of the prosthesis in a disc nucleus space.

Finally, Li '505 appears to show a prosthetic disc nucleus, and the prosthetic disc nucleus appears to have a drawstring (filaments) 10 for manipulating the device. However, the filaments of Li are effective merely for pulling the device into a cannula before implantation, and are not effective for folding the device after implantation in a disc nucleus space as required by the claim. Moreover, Li fails to suggest any modification of his device that would make it effective for folding the device after implantation in a disc nucleus space. This is more than a mere preference or difference in intended use. It is a substantive structural difference in the devices. Li's device is folded to fit in a cannula, and expands naturally when exiting the cannula in a disc space. The device of the presently claimed invention enters the disc space in an unfolded configuration, and is manipulated by the drawstring to be folded within the disc space.

For the reasons stated above, it is respectfully submitted that applicant's claimed device and method, whereby the device has a drawstring effective for folding the device from a first, unfolded configuration to a second folded configuration while the device is implanted in a disc nucleus space, are neither taught nor suggested by the cited prior art. Favorable reconsideration of the amended claims is therefore respectfully requested.

In the event that the Office now agrees that amended generic claims 1 and 16 are patentable, it is respectfully submitted that withdrawn claims 5-11, 20-26 and 28-30 should be reinstituted in the application. The previously withdrawn claims all depend from generic claims that are believed to be patentable, making all pending claims allowable over the cited art of record.

Respectfully submitted,

By 

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